

# SENATE BILL No. 425

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-50-2-9.

**Synopsis:** Newly discovered evidence. Provides that, even after a defendant's postconviction proceedings have become final, the supreme court shall consider previously undisclosed exculpatory evidence as part of its continuing automatic review of capital cases.

**Effective:** July 1, 2002.

## Bowser

January 10, 2002, read first time and referred to Committee on Judiciary.

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Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

## SENATE BILL No. 425

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 35-50-2-9 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 9. (a) The state may  
3 seek either a death sentence or a sentence of life imprisonment without  
4 parole for murder by alleging, on a page separate from the rest of the  
5 charging instrument, the existence of at least one (1) of the aggravating  
6 circumstances listed in subsection (b). In the sentencing hearing after  
7 a person is convicted of murder, the state must prove beyond a  
8 reasonable doubt the existence of at least one (1) of the aggravating  
9 circumstances alleged. However, the state may not proceed against a  
10 defendant under this section if a court determines at a pretrial hearing  
11 under IC 35-36-9 that the defendant is a mentally retarded individual.  
12 (b) The aggravating circumstances are as follows:  
13 (1) The defendant committed the murder by intentionally killing  
14 the victim while committing or attempting to commit any of the  
15 following:  
16 (A) Arson (IC 35-43-1-1).  
17 (B) Burglary (IC 35-43-2-1).



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- 1 (C) Child molesting (IC 35-42-4-3).
- 2 (D) Criminal deviate conduct (IC 35-42-4-2).
- 3 (E) Kidnapping (IC 35-42-3-2).
- 4 (F) Rape (IC 35-42-4-1).
- 5 (G) Robbery (IC 35-42-5-1).
- 6 (H) Carjacking (IC 35-42-5-2).
- 7 (I) Criminal gang activity (IC 35-45-9-3).
- 8 (J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).
- 9 (2) The defendant committed the murder by the unlawful
- 10 detonation of an explosive with intent to injure person or damage
- 11 property.
- 12 (3) The defendant committed the murder by lying in wait.
- 13 (4) The defendant who committed the murder was hired to kill.
- 14 (5) The defendant committed the murder by hiring another person
- 15 to kill.
- 16 (6) The victim of the murder was a corrections employee,
- 17 probation officer, parole officer, community corrections worker,
- 18 home detention officer, fireman, judge, or law enforcement
- 19 officer, and either:
- 20 (A) the victim was acting in the course of duty; or
- 21 (B) the murder was motivated by an act the victim performed
- 22 while acting in the course of duty.
- 23 (7) The defendant has been convicted of another murder.
- 24 (8) The defendant has committed another murder, at any time,
- 25 regardless of whether the defendant has been convicted of that
- 26 other murder.
- 27 (9) The defendant was:
- 28 (A) under the custody of the department of correction;
- 29 (B) under the custody of a county sheriff;
- 30 (C) on probation after receiving a sentence for the commission
- 31 of a felony; or
- 32 (D) on parole;
- 33 at the time the murder was committed.
- 34 (10) The defendant dismembered the victim.
- 35 (11) The defendant burned, mutilated, or tortured the victim while
- 36 the victim was alive.
- 37 (12) The victim of the murder was less than twelve (12) years of
- 38 age.
- 39 (13) The victim was a victim of any of the following offenses for
- 40 which the defendant was convicted:
- 41 (A) Battery as a Class D felony or as a Class C felony under
- 42 IC 35-42-2-1.

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(B) Kidnapping (IC 35-42-3-2).

(C) Criminal confinement (IC 35-42-3-3).

(D) A sex crime under IC 35-42-4.

(14) The victim of the murder was listed by the state or known by the defendant to be a witness against the defendant and the defendant committed the murder with the intent to prevent the person from testifying.

(15) The defendant committed the murder by intentionally discharging a firearm (as defined in IC 35-47-1-5):

(A) into an inhabited dwelling; or

(B) from a vehicle.

(16) The victim of the murder was pregnant and the murder resulted in the intentional killing of a fetus that has attained viability (as defined in IC 16-18-2-365).

(c) The mitigating circumstances that may be considered under this section are as follows:

(1) The defendant has no significant history of prior criminal conduct.

(2) The defendant was under the influence of extreme mental or emotional disturbance when the murder was committed.

(3) The victim was a participant in or consented to the defendant's conduct.

(4) The defendant was an accomplice in a murder committed by another person, and the defendant's participation was relatively minor.

(5) The defendant acted under the substantial domination of another person.

(6) The defendant's capacity to appreciate the criminality of the defendant's conduct or to conform that conduct to the requirements of law was substantially impaired as a result of mental disease or defect or of intoxication.

(7) The defendant was less than eighteen (18) years of age at the time the murder was committed.

(8) Any other circumstances appropriate for consideration.

(d) If the defendant was convicted of murder in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing. The jury or the court may consider all the evidence introduced at the trial stage of the proceedings, together with new evidence presented at the sentencing hearing. The court shall instruct the jury concerning the statutory penalties for murder and any other offenses for which the defendant was convicted, the potential for

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consecutive or concurrent sentencing, and the availability of good time credit and clemency. The defendant may present any additional evidence relevant to:

(1) the aggravating circumstances alleged; or

(2) any of the mitigating circumstances listed in subsection (c).

(e) Except as provided by IC 35-36-9, if the hearing is by jury, the jury shall recommend to the court whether the death penalty or life imprisonment without parole, or neither, should be imposed. The jury may recommend:

(1) the death penalty; or

(2) life imprisonment without parole;

only if it makes the findings described in subsection ~~(k)~~: **(l)**. The court shall make the final determination of the sentence, after considering the jury's recommendation, and the sentence shall be based on the same standards that the jury was required to consider. The court is not bound by the jury's recommendation. In making the final determination of the sentence after receiving the jury's recommendation, the court may receive evidence of the crime's impact on members of the victim's family.

(f) If a jury is unable to agree on a sentence recommendation after reasonable deliberations, the court shall discharge the jury and proceed as if the hearing had been to the court alone.

(g) If the hearing is to the court alone, except as provided by IC 35-36-9, the court shall:

(1) sentence the defendant to death; or

(2) impose a term of life imprisonment without parole;

only if it makes the findings described in subsection ~~(k)~~: **(l)**.

(h) If a court sentences a defendant to death, the court shall order the defendant's execution to be carried out not later than one (1) year and one (1) day after the date the defendant was convicted. The supreme court has exclusive jurisdiction to stay the execution of a death sentence. If the supreme court stays the execution of a death sentence, the supreme court shall order a new date for the defendant's execution.

(i) If a person sentenced to death by a court files a petition for post-conviction relief, the court, not later than ninety (90) days after the date the petition is filed, shall set a date to hold a hearing to consider the petition. If a court does not, within the ninety (90) day period, set the date to hold the hearing to consider the petition, the court's failure to set the hearing date is not a basis for additional post-conviction relief. The attorney general shall answer the petition for post-conviction relief on behalf of the state. At the request of the attorney general, a

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prosecuting attorney shall assist the attorney general. The court shall enter written findings of fact and conclusions of law concerning the petition not later than ninety (90) days after the date the hearing concludes. However, if the court determines that the petition is without merit, the court may dismiss the petition within ninety (90) days without conducting a hearing under this subsection.

(j) A death sentence is subject to **continuing** automatic review by the supreme court. The review, which shall be heard under rules adopted by the supreme court, shall be given priority over all other cases. The supreme court's review must take into consideration all claims that the:

- (1) conviction or sentence was in violation of the:
  - (A) Constitution of the State of Indiana; or
  - (B) Constitution of the United States;
- (2) sentencing court was without jurisdiction to impose a sentence; and
- (3) sentence:
  - (A) exceeds the maximum sentence authorized by law; or
  - (B) is otherwise erroneous.

**In addition, the supreme court shall consider any claim under subsection (k) that a person's conviction or sentence should be set aside due to the existence of previously undisclosed evidence.** If the supreme court cannot complete its review by the date set by the sentencing court for the defendant's execution under subsection (h), the supreme court shall stay the execution of the death sentence and set a new date to carry out the defendant's execution.

**(k) If a person sentenced to death, at any time after the proceedings on the person's petition for post-conviction relief become final, makes a prima facie showing to the supreme court that:**

- (1) previously undisclosed evidence exists; and**
- (2) there is a reasonable likelihood that this evidence would have affected the person's conviction or sentence if disclosed at trial;**

**the supreme court shall consider this undisclosed evidence as a part of its continuing automatic review of capital cases. The supreme court's review of this evidence shall be conducted under rules adopted by the supreme court.**

**(l) Before a sentence may be imposed under this section, the jury, in a proceeding under subsection (e), or the court, in a proceeding under subsection (g), must find that:**

- (1) the state has proved beyond a reasonable doubt that at least**



- 1 one (1) of the aggravating circumstances listed in subsection (b)
- 2 exists; and
- 3 (2) any mitigating circumstances that exist are outweighed by the
- 4 aggravating circumstance or circumstances.

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